

**Request for Qualifications (RFQ)  
to provide Surveyor Services  
for the Suffolk County Division of Real Property Acquisition and Management**

**Technical Questions Due: Monday May 6, 2013  
To be emailed or faxed to the Suffolk County Department of Real Property Acquisition and  
Management**

**Responses must be submitted no later than 3:30 p.m. on Monday, May 20, 2013.  
Responses must be returned to the Suffolk County Division of Real Property Acquisition and  
Management**

**Number of Copies of Response to be submitted: One Original plus three (3) copies**

**County of Suffolk  
Suffolk County Division of Real Property Management and Acquisition  
H. Lee Dennison Building  
100 Veterans Highway, 2<sup>nd</sup> Floor  
Hauppauge, N.Y. 11788**

**For additional information, call:**

**Name           Anthony Abruzzo  
Direct Tel:   (631) 853-5195  
Main Tel.     (631) 853-5972  
Fax:           (631) 853-6329  
Email:         Anthony.Abruzzo@suffolkcountyny.gov**

**All packages containing Responses must clearly state the RFQ No. (located on upper right hand corner of this page) on each outer mailing envelope or packing box.**

**The Original Response and also each required copy must be clearly marked with the RFQ number on the outer binder or cover page. The Original Response must be labeled "ORIGINAL" and must contain the original, ink-signed required County forms and transmittal letter, in addition to your Response.**

**All extra sets must be photocopies of the ENTIRE original Response submitted, including the transmittal letter and all required County forms. Each member of the Evaluation Committee is provided with one of the sets you send to us, so make sure each set is complete.**

**Do NOT return this RFQ document, the sample Model Agreement or the Legal Appendices packet; keep them for your reference.**

**LATE RESPONSES WILL BE REJECTED**

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**Section I**  
**Administrative Information**

**1. Purpose of RFQ**

The County of Suffolk ("**County**"), on behalf of its duly constituted Department of Economic Development and Planning, Division of Real Property Acquisition and Management ("**Department**"), invites responses ("**Response(s)**") from qualified surveyors to provide consulting services ("**Services**"), as described in Section IV, entitled "Technical Services Requirements."

**2. Coordinating Departments**

**a. Prior to Award of Contract**

The Department contact listed on the first page of this RFQ will coordinate the issuance of the RFQ.

**b. After Award of Contract**

The Suffolk County Attorney's Office is responsible for coordinating with the Department and the Contractor regarding the negotiation and execution of the contract.

**c. After Execution of Contract**

The Department is responsible for administration of the Contractor's contract.

- i.** If approved by the Department, the County will execute an agreement with the Contractor, based on the Model Agreement included in this RFQ.
- ii.** The Response submitted by the Contractor to this RFQ will become the basis for the Agreement. Please note that the Contractor must address, as applicable, all items listed in:
  - Section II, entitled "Contractor Profile"; and
  - Section III, entitled "Technical Services Requirements".

**3. Background Information**

- a.** Suffolk County, with a population of 1.5 million, is Long Island's eastern-most county, and covers an area approximately 900 square miles, from 20 miles at its widest part to a length of approximately 86 miles.
- b.** The County of Suffolk is a municipal corporation of the State of New York with an annual operating budget of \$2.6 billion. The County employs approximately 12,000 active employees, with main offices located in Hauppauge, Yaphank, Riverhead and several smaller locations.

**4. Evaluation Committee and Award of Contract**

The RFQ Evaluation Committee will include representatives of the Department. The Suffolk County Department of Law acts as counsel to the Evaluation Committee, but does not vote in the selection process. The award of any contract will be made in the best interest of the County.

**5. Questions and Comments**

**a. Administrative Questions**

Administrative questions (e.g., procedural questions on how to respond to this RFQ) may be submitted by telephone or email to the Department staff member listed on page one of this RFQ.

**b. Technical Questions**

Technical questions (questions which are specific to the service requested in this RFQ) must be submitted in writing (email is acceptable) on or before the date set forth on page one of this RFQ to the attention of the Department staff member listed on page one of this RFQ. Responses to such technical questions will be developed by the requesting Department and issued by the Department in the form of an Addendum to this RFQ.

- c.** No questions or comments should be directed to any County employee or its Contractors or any firm currently in contract with the County regarding this RFQ during the RFQ process, except as set forth in sub-paragraphs 5.a and 5.b above or as may be requested or permitted by the Suffolk County Department of Law. Failure to comply may result in immediate disqualification.

**6. Due Date for Responses**

- a.** Responses must be submitted to the attention of the Department staff person set forth on page one of this RFQ, by 3:30 p.m. on the date set forth on page one of this RFQ. Responses must be postmarked by the time and date set forth on page one of this RFQ.
- b.** In the interest of fairness to all participants, no extensions or exceptions will be permitted, unless issued as an Addendum to this RFQ and applicable to all Responders, except that the Department, in its sole discretion, may thereafter solicit and accept responses from additional professionals as needed.

**7. Number of Copies of Response**

One original plus three (3) copies of the Responses to Sections II and III are required to be sent to the Department. Do not submit Responses that are permanently bound.

**8. RFQ Policies and Procedures**

- a.** It is the County's intent to select the Responder(s) that provides the best solution for the Department's needs.
- b.** Any contract awarded pursuant to this RFQ will be in the format set forth in Section V, "Model Agreement," but will be subject to final contract negotiations.

- c. The County reserves the right to amend this RFQ. The County reserves the right to reject any or all of the Responses, or any part thereof, submitted in response to this RFQ, and reserves the right to waive formalities, if such action is deemed to be in the best interest of the County. The County reserves the right to request additional information from any Responder. The County reserves the right to award negotiated contracts to one or more Responders.
- d. This RFQ is not intended and shall not be construed to commit the County to pay any costs incurred in connection with any Response or to procure or contract for any services.
- e. The decision to award a contract shall be based on the ability of the Responder to provide quality products and services and to comply with all applicable laws, rules and regulations, including without limitation the local preference and other Suffolk County local laws set forth in the Section entitled "Legal Appendices/County Forms."
- f. The award of any contract will be made as judged to be in the best interest of the County.
- g. Each Response will be examined to determine whether it is responsive to the requirements of this RFQ. Responses will be evaluated in accordance with established criteria relating to quality, quantity, and performance as set forth in paragraphs 11 and 12 of this section.
- h. While the County is under no obligation to contact Responders for clarifications, it reserves the right to do so. Depending on the number and quality of the Responses submitted, the County, at the sole discretion of the Evaluation Committee, may elect to interview some or all of the Responders during the selection process and to request presentations.
- i. In order for the County to conduct a uniform review process of all Responses, Responses must be submitted in the format set forth in this Section I, paragraph 10 entitled "Response Format". Failure to follow this format may be cause for rejection of a Response.
- j. The County reserves the right to award a contract to one or more responsive and responsible Responders, and to select among multiple contracts at the time of purchase based upon the most practical and economical alternative and the best interests of the County.

**9. Copies of RFQ Posted on Department Website**

Copies of this RFQ are available online at the Department's website:

<http://www.suffolkcountyny.gov/Departments/EconomicDevelopmentandPlanning/RealPropertyAcquisitionandManagement.aspx>

**10. Response Format**

Responses must include the following:

**a. Transmittal Letter (one original plus number of copies listed on cover page)**

A transmittal letter is a letter on the Responder's stationery. A corporate officer or an authorized agent of the Contractor must sign the transmittal letter. The transmittal letter should state the contact person who will be responsible for answering any questions that the Evaluation Committee may have. Include the telephone number and fax number for such contact person.

**b. Contractor's/Vendor's Public Disclosure Statement - SCEX 22 Form (3 pages)**

Included in the Appendix, "Suffolk County RFQ Compliance Forms." A corporate officer or an authorized agent of the Responder must sign one (1) original form and have it notarized.

**c. Disqualification of Non-Responsible Bidders – LL52-2012 Form (2 pages)**

Signed by a corporate officer or an authorized agent of the Responder. The Disqualification of Non-Responsible Bidders form is included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions.

**d. Non-Collusive Response/Proposal Certification – FTS Form (1 page)**

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions.

**e. Living Wage Forms – LW-1 and/or LW-38 Forms**

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions. The Labor Department's Living Wage Unit may be reached at (631) 853-3808 for specific questions.

**f. Lawful Hiring Forms – LHE-1 & LHE-2 Forms**

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See forms for instructions. The Labor Department's Lawful Hiring of Employees Unit may be reached at (631) 853-3808 for specific questions.

**g. Union Organizing Certification/Declaration – DOL-LO1 Form (2 pages)**

Included in the Appendix, "Suffolk County RFQ Compliance Forms". See form for instructions.

**h. Local Preference Law**

Local Preference Law – Section A4-13 of the Suffolk County Administrative Code establishes a preference program for Suffolk County consulting contracts. This preference program requires all contracts for professional consulting services (engineering, architectural, planning, legal, accounting, etc.) to be awarded to firms located and doing business within Suffolk or Nassau County, except where no local consultant has the necessary expertise or credentials to provide the needed service, or where a local consultant's response to a Request for Qualifications (RFQ) exceeds the otherwise lowest response by more than 10%. The local law contains specific definitions and language relative to application of this law which interested parties should review. The Laws of Suffolk County are available free of charge at <http://legis.suffolkcountyny.gov/> under the "Search the Laws of Suffolk County" tab. Contractors who believe they qualify for preferential treatment under the Local Preference Law must attach a separate statement to their response, which supports and documents their request for such preferential treatment.

**i. Responder's Profile/Response to Questions set forth in the RFQ Section II entitled "Responder Profile"**

This section will be used in the County's evaluation of the Responder's general qualifications.

**j. Responder's Proposed Technical Services/Response to items set forth in the RFQ Section entitled "Technical Services Requirements"**

This section will be used in the County's evaluation of the Responder's proposed technical services.

**k. List (if applicable) of Subcontractors**

Identify all sub-contractors the Contractor plans to use and the function for which such sub-contractors will be responsible. Provide qualifications, including prior relevant experience, for sub-contractors anticipated to be used. Failure to include this information in the response may be grounds for disqualification.

**11. Award Criteria**

**a. General Qualifications: 50 points**

Contractor's history, expertise, experience, reliability, financial viability, licensing and references.  
See RFQ Section III, entitled "Contractor Profile," for specific requirements.

**b. Proposed Technical Services/Products: 50 points**

Strategies, methodologies, services offered by Responder. See RFQ Section VI, entitled "Technical Services Requirements" for specific requirements.

**Total 100 points**

**12. Contract Term and Conditions**

- a.** Reference is made to the Model Form Agreement for the terms and conditions of the Agreement to be entered into, including indemnification and insurance. The Model Agreement is subject to revision arising out of the terms and conditions imposed by law and/or deemed appropriate by the County Attorney's Office. The Responder should not return the Model Agreement with the Response.
- b.** If the Responder has a concern or question related to any of the terms and conditions included in the Model Agreement, the Responder should note such concerns or questions in the Response. The Response must identify any items relating to the Model Agreement that the Responder requests be negotiated.
- c.** Contractor responses to this RFQ, as may be subsequently modified in negotiations with the County, may be included as exhibits in any contracts that the County may execute with the Contractor.

- d. The County will execute a contract with principal Contractors only. Any arrangements, including fee arrangements, partnerships or collaborations between the principal Contractor and sub-contractors that provide services as part of the Proposal, must be fully disclosed in the Proposal.
- e. It is anticipated that this RFQ process shall be concluded and a "letter of award" made in May 2013. The anticipated commencement date of Services shall be on or about June 1, 2013.

**13. Use of County Resources to Interfere with Collective Bargaining Activities  
Local Law No. 26-2003**

Responders are advised that the efficient, timely, and non-disruptive provision of goods and services is a paramount financial interest of the County and as such the County expects the potential Contractor to protect the County's financial interest by adopting non-confrontational procedures for the orderly resolution of labor disputes, including but not limited to, neutrality agreements, majority authorization card agreements, binding arbitration agreements, fair communication agreements, non-intimidation agreements, and reasonable access agreements.

**14. NYS Freedom of Information Law (FOIL)**

All Responses for the County's consideration will be held in confidence pending final execution of the contract(s). However, fully executed contracts are subject to the New York State Freedom of Information Law (FOIL), codified at Public Officers' Law Article 6. Therefore, if a Responder believes that any information in its Response constitutes a trade secret or is otherwise information which, if disclosed, would cause substantial injury to the competitive position of the Responder's enterprise, and the Responder wishes such information to be withheld if requested pursuant to FOIL, the Responder shall submit with its Response a separate letter addressed to the primary contact referenced in this RFQ, specifically identifying the page number(s), line(s) or other appropriate designation(s) of the Response containing such information, explaining in detail why such information is a trade secret or is other information, which if disclosed would cause substantial injury to the competitive position of the Responder's enterprise, and formally requesting that such information be kept confidential. Failure by a Responder to submit such a letter with its Response will constitute a waiver by the Respondent of any interest in seeking exemption of this information under Article 6 of the Public Officers' Law relating to protection of trade secrets. The proprietary nature of the information designated confidential by the Responder may be subject to disclosure if it is requested and the County deems it subject to disclosure or if ordered by a court of competent jurisdiction. A request that an entire Response be kept confidential may not be considered reasonable since a Response cannot reasonably consists of all data exempt from FOIL.

**End of Text for Section I**

## **Section II Responder Profile**

### **1. General Information**

- a. Company name and address.
- b. Year company was founded and brief history.
- c. Total number of employees in company.
- d. Location(s) from which services will be performed.
- e. Describe the nature of your organization (e.g., business corporation, not-for-profit corporation, proprietorship, etc.).

### **2. Qualifications and Experience of Personnel**

- a. Provide resumes of the project director(s) and other key staff who will be assigned to projects covered by this RFQ. Describe the qualifications and background of your staff, insofar as they relate to such projects.
- b. If you intend to use the services of a subcontractor, please provide all of the above information for such subcontractor. Note that the County must pre-approve the use of any subcontractors.
- c. Describe other projects involving similar technical services. Describe the role and experience of key personnel assigned to other similar projects who will be assigned to this project
- d. It is expected that staff and subcontractors identified under this RFQ will be the staff or subcontractors utilized for any assignments under this RFQ
- e. In addition, Suffolk County may make such investigations as it deems necessary to determine the ability of the Responder to perform the work. The Responder shall furnish to the County, within five (5) business days of a request, all such information and data for this purpose as may be requested. The County reserves the right to reject any Response if the information submitted by, or investigation of, such Responder fails to satisfy the County that such Responder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein. Conditional Responses will not be accepted.

### **3. Financial Viability**

#### **a. Indebtedness to County, Liens and Litigation**

Submit a statement as to indebtedness, if any, to the County; and a listing of all outstanding liens, if any, against the Responder. Submit a summary of litigation, if any, against the Responder and its disposition.

#### **b. Statement Regarding Bankruptcy**

Submit a statement disclosing any bankruptcy(ies) filed within the last seven years. The Statement must include the date the bankruptcy was originally filed, the current status, and, if applicable, the date the bankruptcy was discharged.

**4. Responder's History**

- a. Describe other projects involving similar services. Outline your experience and duration in the provision of such similar services, including clients served and the length of time providing such services.
- b. Responders must demonstrate that they have the necessary expertise to provide the required services. Each Responder should describe in detail the relevant expertise it has in providing the services required.

**5. References**

- a. Provide three client references for which you have provided services (current governmental or quasi-governmental agencies preferred). Provide name of the organization, services, contact name and telephone number.
- b. Provide a list of all contracts with the County of Suffolk within the last five years (regardless of type of service), the time period for those services and your primary County contact.

**6. Conflicts of Interest and/or Potential Conflicts of Interest**

**a. Relationships with Third Parties**

All Contractors with the County of Suffolk are charged with the continuing duty to disclose to the County the existence of any interests it may have, contractual or otherwise, ongoing or previous, with any companies or individuals with whom the County of Suffolk does business with respect to the services required by this RFQ. This duty continues for so long as the Contractor is retained on behalf of the County or its employees. Responses shall disclose any material financial relationship that the Responder or any employee of the Responder has that may create a conflict of interest in acting as a Contractor for Suffolk County.

**b. Relationships with County Departments/Agencies/Employees**

All Contractors with the County of Suffolk are charged with the continuing duty to disclose to the County the existence of any interests it may have, contractual or otherwise, ongoing or previous, with any County department, agency or employee. This duty continues for so long as the Contractor is retained on behalf of the County or its employees. Responses shall disclose any family relationship that the Responder or any employee of the Responder has with any County employee that may create a conflict of interest acting as a Contractor for Suffolk County.

**End of Text for Section II**

### **Section III Technical Services Requirements**

#### **1. Background Information and Overview**

The Department, in cooperation with other County departments, is responsible for the acquisition and management of real property under Federal, State, and local land preservation programs. The Department also cooperates with other County departments in the management of County real property. In order to carry out acquisitions pursuant to these programs and otherwise manage County real property, the Department requires independent surveys of the property to be acquired and/or managed. Such independent surveys may also include, from time to time, independent surveys of the inventories and improvements on such properties.

#### **2. Services Covered by this RFQ**

- a. Contractors will provide Property Boundary Surveys. The field work shall include the running of all necessary traverses to confirm and establish metes, bounds, and areas of the various parcels contained within the Suffolk County tax lots as described. All existing boundary corners will be verified. All boundary corners not found will be set using steel rods, with a minimum length of 18 inches and identified with a plastic cap labeled Property Corner. All buildings, fences, streams, woods, cleared areas, debris piles, and any improvements within the boundary lines will be located. All improvements 5 feet or less, outside of the existing boundary shall be located. The Contractor shall make every effort to minimize the removal of vegetation while completing the field work. Contractors may also be required to perform independent surveys of the inventories and improvements on such properties.
- b. The survey shall be referenced to the New York State Plane Coordinate System for Suffolk County and the control monuments used noted on the map along with the coordinates of all control points. The minimum accuracy required will be 1:20,000.
- c. The Contractor shall prepare the Boundary Survey showing the name of the last owner of record of the said parcel, and the specific preservation program that the parcel is being purchased under. Legal descriptions shall be shown on the survey of the acquired parcels and any retained parcels that have been excluded from the sale.
- d. The Boundary Survey shall be certified to the County of Suffolk and a title company chosen by the County.
- e. The Contractor shall supply the Department with six (6) preliminary copies of the survey. After the Department's Map and Coordinate Supervisor reviews the preliminary copies and makes any necessary changes, the Contractor shall supply the Department with twelve (12) certified copies. Maps shall be no larger than 24 inches by 36 inches with a scale not exceeding 1 inch equals 50 feet. Multiple sheets will be required as needed.
- f. A CD in PDF format will be required along with the certified copies.

#### **3. Minimum Qualifications**

Qualifications shall include, at a minimum, but are not limited to, licensing by the State of New York to perform the Services described herein.

**4. Contract Term**

The Department is seeking to enter into contracts with awarded Responders for a period of two (2) years plus one (1) one-year option to renew at the County's discretion.

**End of Text for Section III**

**Section IV  
Compensation**

1. The County's intent is to pay the Contractor as follows:

- a. **Request for Fee Proposal**

At such time as the Department may require a particular survey, the Department shall issue to Contractors selected pursuant to this RFQ a "Request for Fee Proposal" setting forth the specific requirements for the survey needed. Contractors may submit a Fee Proposal for the described survey by the date provided in the Request for Fee Proposal. The Department will evaluate responsive Contractor Fee Proposals and select the most economical and practical alternative.

- b. **Letter of Authorization**

If a Contractor Fee Proposal is accepted by the Department, the Contractor shall be authorized to proceed on the survey by a Letter of Authorization signed by the Department and such other County signatures as may be necessary. For any particular survey, the Contractor agrees that it shall be entitled to no more than the fees set forth in its Contractor Fee Proposal as approved by the Department and that such fees are inclusive of the completion of all work, labor, and services contemplated for such survey.

2. The County reserves the right to change this payment structure, as may be appropriate. Prior to any contract processing, Responders shall be notified of any changes and will have the option to not accept proposed changes. If Responders do not accept proposed changes to payment terms, any further contract processing shall be terminated.
3. The County reserves the right to select among multiple contracts at the time of purchase based upon the most practical and economical Request for Fee Proposal and the best interests of the County. The award of a contract pursuant to this RFQ shall not be construed to commit the County to procure any services.

**End of Text for Section IV**

**Section V**  
**Model Agreement**

**Surveyor Services Agreement**

**This Contract (“the Agreement”)** is between the **County of Suffolk (“the County”)**, a municipal corporation of the State of New York, acting through its duly constituted **Department of Economic Development and Planning, Division of Real Property Acquisition and Management (“Department”)**, located at **H. Lee Dennison Building, 2<sup>nd</sup> Floor, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788-0099**; and

**Insert Name of Contractor (“the Contractor”)**, having an address at **Insert Address**.

The parties hereto desire to make surveyor services related to the acquisition and management of real property available to the County (“**Services**”).

**Term of the Agreement:** Shall be from June 1, 2013, through July 31, 2015, with one (1) one-year option to renew at the County’s discretion.

**Total Cost of the Agreement:** Shall be on a fee-for-service basis as set forth in Article II, attached.

**Terms and Conditions:** Shall be as set forth in Articles I and II and Exhibits 1 and 2, attached hereto and made a part hereof.

**In Witness Whereof**, the parties hereto have executed the Agreement as of the latest date written below.

**Name of Contractor**

**COUNTY OF SUFFOLK**

By: \_\_\_\_\_  
Name  
Title  
Fed. Tax ID #  
Date \_\_\_\_\_

By: \_\_\_\_\_  
Dennis M. Cohen  
Chief Deputy County Executive  
Date: \_\_\_\_\_

**Approved as to Legality:**  
**Dennis M. Brown**  
**County Attorney**

**Approved:**  
**Department of Economic Development and Planning**

By: \_\_\_\_\_  
Name  
Assistant County Attorney  
Date \_\_\_\_\_

By: \_\_\_\_\_  
Name  
Title  
Date \_\_\_\_\_

## **List of Articles & Exhibits**

### **Article I**

#### **Description of Services**

1. Conflicting Provisions
2. Services
3. Surveys

### **Article II**

#### **Financial Terms and Conditions**

1. Conflicting Provisions
2. General Payment Terms
3. Agreement Subject to Appropriation of Funds
4. Accounting Procedures
5. Audit
6. Comptroller's Rules and Regulations for Consultant's Agreements
7. Specific Payment Terms and Conditions

### **Exhibit 1**

#### **County Terms and Conditions**

1. Elements of Interpretation
2. Meanings of Terms
3. Contractor Responsibilities
4. Qualifications, Licenses, and Professional Standards
5. Notifications
6. Documentation of Professional Standards
7. Credentialing
8. Engineering Certificate
9. Termination
10. Indemnification and Defense
11. Insurance
12. Independent Contractor
13. Severability
14. Merger; No Oral Changes
15. Set-Off Rights
16. Non-Discrimination in Services
17. Nonsectarian Declaration
18. Governing Law
19. No Waiver
20. Conflicts of Interest
21. Cooperation on Claims
22. Confidentiality
23. Assignment and Subcontracting
24. Changes to Contractor
25. No Intended Third Party Beneficiaries
26. Certification as to Relationships
27. Publications

- 28. Copyrights and Patents
- 29. Arrears to County
- 30. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction
- 31. Record Retention
- 32. Notice

**Exhibit 2**

**Suffolk County Legislative Requirements**

- 1. Contractor's/Vendor's Public Disclosure Statement
- 2. Living Wage Law
- 3. Use of County Resources to Interfere with Collective Bargaining Activities
- 4. Lawful Hiring of Employees Law
- 5. Gratuities
- 6. Prohibition Against Contracting with Corporations that Reincorporate Overseas
- 7. Child Sexual Abuse Reporting Policy
- 8. Non Responsible Bidder
- 9. Use of Funds in Prosecution of Civil Actions Prohibited
- 10. Youth Sports
- 11. Work Experience Participation
- 12. Suffolk County Local Laws Website Address

**Article I**  
**Description of Services**

**Whereas**, the Department, in cooperation with other County departments, is responsible for acquisition and management of real property under Federal, State, and local land preservation programs; and

**Whereas**, in order to carry out acquisitions pursuant to these programs, the Department requires independent surveys of the property to be acquired; and

**Whereas**, in order to maintain the properties the County has acquired, the Department also requires independent surveys of the inventories and improvements on such properties; and

**Whereas**, the Department, in cooperation with other County departments, also coordinates management activities related to other County real property; and

**Whereas**, the Department issued a Request for Qualifications, RFQ No. \_\_\_\_\_, on April 22, 2013; and

**Whereas**, the Contractor submitted a response to such Request for Qualifications; and

**Whereas**, the County has selected the Contractor to provide the services as set forth herein;

**Now Therefore**, in consideration of the mutual provisions and covenants hereafter set forth, the parties hereto agree as follows:

**1. Conflicting Provisions**

In the event of any conflict between any provision in this Article I and an exhibit to this Agreement, the exhibit shall prevail unless it is expressly stated in the conflicting provision in this Article I, that it shall prevail over the exhibit.

**2. Services**

- a) The Contractor shall conduct surveys of real property, including, but not limited to inventory and improvements, at the direction of the County. The term “survey” includes, but is not limited to, the measuring and plotting of the dimensions and areas of any portion of the earth, including but not limited to, all naturally and placed and man- or machine-made structures and objects thereon, the lengths and directions of boundary lines, the contour of the surface and the application of rules and regulations in accordance with local requirements incidental to subdivisions for the correct determination, description, conveying and recording thereof or for the establishment or reestablishment thereof.
- b) The Contractor shall perform the survey services described in the Department’s Letter of Authorization within 30 calendar days after its receipt unless a different period is specified in such Letter or the Department extends the time of performance in writing. IT IS UNDERSTOOD AND AGREED between the Contractor and the Department that the time

within which a survey is to be completed under this Agreement is of primary importance. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

### 3. Surveys

- a) The performance of a survey shall include, but not be limited to, the running of all necessary traverses to confirm and establish metes, bounds, and areas of the various parcels contained within the Suffolk County tax lots as described on the Request for Fee Proposal and/or Letter of Authorization. At the direction of the County, the Contractor may also be required to survey inventory and/or improvements. Surveys shall include, but not be limited to, the following:
  - i. all existing boundary corners must be verified and mapped;
  - ii. all boundary corners not found must be set using steel rods, with a minimum length of eighteen (18) inches and identified with a plastic cap labeled "Property Corner";
  - iii. all buildings, fences, streams, woods, cleared areas, debris piles, and any improvements within the boundary lines must be located and mapped;
  - iv. all improvements five (5) feet or less, outside of the existing boundary must be located and mapped; and
  - v. the Contractor shall make every effort to minimize the removal of vegetation while completing the field work.
- b) All surveys shall be referenced to the New York State Plane Coordinate System for Suffolk County and the control monuments used noted on the map along with the coordinates of all control points. The minimum accuracy required will be 1:20,000.
- c) All surveys shall be submitted to the Department in a form acceptable to the Department and shall include, among other things:
  - i. survey maps;
  - ii. a metes and bounds description of the surveyed property;
  - iii. the name of the last owner of record of the said property;
  - iv. the specific preservation program that the property is being purchased under;
  - v. a legal description of the property. Legal descriptions must be shown on the survey of the acquired parcels and any retained parcels that have been excluded from the sale.
- d) All surveys shall be certified to the County of Suffolk and a title company chosen by the County.
- e) The Contractor shall supply six (6) preliminary copies of the surveys to the Department. After the Department has reviewed the preliminary copies and has made any required changes, the Contractor shall supply twelve (12) certified copies of the surveys to the Department. Maps shall be no larger than 24 inches by 36 inches with a scale not exceeding 1 inch equals 50 feet. Multiple sheets will be required as needed.
- f) The Contractor shall also supply to the Department a compact disc (CD) containing certified copies of the surveys in PDF format.

- g) The Department may withdraw any such portions of the property to be surveyed as it deems advisable without advance notice to the Contractor.
- h) The Department reserves the right to make additional Agreements with other Contractors for similar or different work on a particular survey and/or property.
- i) The County reserves the right to change, modify, add to, and/or subtract from the requirements for survey services under this Article I at any time.

**End of Text for Article I**

## **Article II Financial Terms and Conditions**

### **1. Conflicting Provisions**

In the event of any conflict between any provision in this Article II and an exhibit to this Agreement, the exhibit shall prevail unless it is expressly stated in the conflicting provision in this Article II, that it shall prevail over the exhibit.

### **2. General Payment Terms**

#### **a. Presentation of Suffolk County Payment Voucher**

In order for payment to be made by the County to the Contractor for the Services, the Contractor shall prepare and present a Suffolk County Payment Voucher (Voucher), which shall be documented by sufficient, competent and evidential matter. Each Suffolk County Payment Voucher submitted for payment is subject to Audit at any time during the Term or any extension thereof. This provision shall survive expiration or termination of this Agreement for a period of not less than seven (7) years, and access to records shall be as set forth in paragraph 31 of Exhibit 1, and paragraph 4(b) of Article II.

#### **b. Voucher Documentation**

The Suffolk County Payment Voucher shall list all information regarding the Services and other items for which expenditures have been or will be made in accordance with the Agreement. Either upon execution of the Agreement (for the Services already rendered and expenditures already made), or not more than thirty (30) days after the expenditures were made, and in no event after the 31<sup>st</sup> day of January following the end of each year of the Agreement, the Contractor shall furnish the County with detailed documentation in support of the payment for the Services or expenditures under the Agreement, e.g., dates of the Service, worksite locations, activities, hours worked, pay rates for all Services. The Suffolk County Payment Voucher shall include time records, certified by the Contractor as true and accurate, of all personnel for whom expenditures are claimed during the period. All Suffolk County Payment Vouchers must bear a signature as that term is defined pursuant to New York State General Construction Law §46 by duly authorized persons. Disbursements made by the Contractor in accordance with the Agreement and submitted for reimbursement must be documented and must comply with accounting procedures as set forth by the Suffolk County Department of Audit and Control.

#### **c. Payment by County**

Payment by the County shall be made within thirty (30) days after approval of the Voucher by the Comptroller.

#### **d. Final Voucher**

The acceptance by the Contractor of payment of all billings made on an approved voucher shall operate as and shall be a release of the County from all claims by the Contractor through the date of the Voucher.

**3. Subject to Appropriation of Funds**

- a.** The Agreement is subject to the amount of funds appropriated each fiscal year and any subsequent modifications thereof by the County Legislature, and no liability shall be incurred by the County beyond the amount of funds appropriated each fiscal year by the County Legislature for the Services.
- b.** If the County fails to receive Federal or State funds originally intended to pay for the Services, or to reimburse the County, in whole or in part, for payments made for the Services, the County shall have the sole and exclusive right to:
  - i.** determine how to pay for the Services;
  - ii.** determine future payments to the Contractor; and
  - iii.** determine what amounts, if any, are reimbursable to the County by the Contractor and the terms and conditions under which such reimbursement shall be paid.

**4. Accounting Procedures**

- a.** The Contractor shall maintain accounts, books, records, documents, other evidence, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of the Agreement, in accordance with generally accepted accounting principles and with rules, regulations and financial directives, as may be promulgated by the Suffolk County Department of Audit and Control and the Department. The Contractor shall permit inspection and audit of such accounts, books, records, documents and other evidence by the Department and the Suffolk County Comptroller, or their representatives, as often as, in their judgment, such inspection is deemed necessary. Such right of inspection and audit as set forth in subparagraph (b) below shall exist during the Term and for a period of seven (7) years after expiration or termination of the Agreement.
- b.** The Contractor shall retain all accounts, books, records, and other documents relevant to the Agreement for seven (7) years after final payment is made by the County. Federal, State, and/or County auditors and any persons duly authorized by the County shall have full access and the right to examine any of said materials during said period. Such access is granted notwithstanding any exemption from disclosure that may be claimed for those records which are subject to nondisclosure agreements, trade secrets and commercial information or financial information that is privileged or confidential.

**5. Audit**

- a. All payments made under the Agreement are subject to audit by the Comptroller pursuant to Article V of the Suffolk County Charter. The Contractor further agrees that the Comptroller and the Department shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transactions or other records relating to Services under the Agreement. If such an audit discloses overpayments by the County to the Contractor, within thirty (30) days after the issuance of an official audit report by the Comptroller or his duly designated representatives, the Contractor shall repay the amount of such overpayment by check to the order of the Suffolk County Treasurer or shall submit a proposed plan of repayment to the Comptroller. If there is no response, or if satisfactory repayments are not made, the County may recoup overpayments from any amounts due or becoming due to the Contractor from the County under the Agreement or any other Fund Source.
- b. The provisions of this paragraph shall survive the expiration or termination of the Agreement for a period of seven (7) years, and access to records shall be as set forth in paragraph 31 of Exhibit 1, and paragraph 4(b) of Article II.

## **6. Comptroller's Rules and Regulations for Consultant's Agreements**

The Contractor shall comply with the "Comptroller's Rules and Regulations for Consultant's Agreements" as promulgated by the Department of Audit and Control of Suffolk County and any amendments thereto during the Term of the Agreement. The "Comptroller's Rules and Regulations for Consultant's Agreements" may be viewed online at the County's website, SuffolkCountyNY.gov; go to "Government," then "Comptroller," then "Consultant's Agreements."

## **7. Specific Payment Terms and Conditions**

### **a. Fee-for-Service - Request for Fee Proposal**

The Department shall define, in a written request for fee proposal ("Request for Fee Proposal"), specific requirements with regard to any survey. In response to the Department's Request for Fee Proposal, the Contractor shall submit a written Fee Proposal (the "Contractor Fee Proposal"), and, if the Contractor Fee Proposal is accepted by the County, the Contractor shall be authorized to proceed on the survey by a "Letter of Authorization" signed by the Department and/or such other County signatures as may be necessary. For any particular survey, the Contractor agrees that it shall be entitled to no more than the fees set forth in its Contractor Fee Proposal as approved and accepted by the Department and that such fees are inclusive of the completion of all work, labor, and services contemplated for such survey.

### **b. Change Orders**

The County may, at any time, by written order, make changes within the general scope of this Agreement in the services or work to be performed. The County may also, at any time, by written order, make changes within the general scope of a Letter of Authorization in the services or work to be performed. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of any services under this Agreement, an adjustment may, at the County's discretion, be made and the Agreement and/or the Letter of Authorization shall

be modified in writing and signed by all parties. Any claim of the Contractor for adjustment under this clause must be asserted in writing within ten (10) days from the date of receipt by the Contractor of the notification of change unless the County grants a further period of time before the date of final payment under this Agreement. No services for which additional compensation shall be charged by the Contractor shall be furnished without written authorization by the County.

**c. Disposition of Work Product in Case of Death or Disability**

In case of the death or disability of the Contractor or of a principal, partner or key employee whose personal services were a substantial inducement to the County's entering into this Agreement (any of whom is called the "principal") before completion of the survey on any property or project all data, records and work products pertaining to such project(s) shall be delivered to the Department by the Contractor, its surviving partner(s), the personal representative(s) of the estate of the principal (within 20 days after appointment), the principal's committee or conservator or other person(s) having control of such data, records and work products. In the event of failure to make such delivery on demand, the person(s) withholding such data, records and work products shall be liable to the County for any damages that it may sustain by reason thereof. Upon delivery of all such data, records and work products, the voucher and itemized statement required under paragraph 2 above, together with evidence of appointment or authority if payment is not to be made to Contractor, the County shall pay the Contractor or its authorized representative or successor such part of the fee(s) provided in this Article II as fairly reflects, in the sole judgment of the Department, the proportion of work performed to the entire work.

**End of Text for Article II**

**Exhibit 1**  
**County Terms and Conditions**

**1. Elements of Interpretation**

As used throughout the Contract:

**a.** Words of the masculine gender shall mean and include correlative words of the feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa. Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons, and shall include successors and assigns.

**b.** Capitalized terms used, but not otherwise defined herein, shall have the meanings assigned to them in the Contract.

**2. Meanings of Terms**

As used in the Contract:

“**Comptroller**” means the Comptroller of the County of Suffolk.

“**Contract**” means all terms and conditions herein forming all rights and obligations of the Contractor and the County.

“**Contractor**” means the signatory person, partnership, corporation, association or other entity, its officers, officials, employees, agents, servants, sub-contractors and any successor or assign of any one or more of the foregoing performing the Services.

“**County**” means the County of Suffolk, its departments, and agencies.

“**County Attorney**” means the County Attorney of the County of Suffolk.

“**Department**” means the signatory department approving the Contract.

“**Engineering Services**” means the definition of the practice of engineering and the definition of practice of land surveying, as the case may be, under Section 7201 and Section 7203 of the State Education Law, respectively.

“**Event of Default**” means

**a.** the Contractor’s failure to perform any duty required of it under paragraphs 4 through 7 of this Exhibit 1 of the Contract; or

**b.** the Contractor’s failure to maintain the amount and types of insurance with an authorized insurer as required by the Contract; or

**c.** the Contractor’s failure to maintain insurance required by the Contract with an insurer that has designated the New York Superintendent of Insurance as its lawful agent for service of process; or

**d.** The Contractor’s failure to comply with any Federal, State or local law, rule, or regulation, and County policies or directives; or

**e.** The Contractor’s bankruptcy or insolvency; or

**f.** The Contractor’s failure to cooperate in an Audit; or

**g.** The Contractor’s falsification of records or reports, misuse of funds, or malfeasance or nonfeasance in financial record keeping arising out of, or in connection with, any contract with the County; or

**h.** The Contractor’s failure to submit, or failure to timely submit, documentation to obtain Federal or State funds; or

**i.** The inability of the County or the Contractor to obtain Federal or State funds due to any act or omission of the Contractor; or

**j.** Any condition the County determines, in its sole discretion, that is dangerous.

“**Federal**” means the United States government, its departments and agencies.

“**Fund Source**” means any direct or indirect sum payable to the Contractor by the County pursuant to any lawful obligation.

“**Legislature**” means the Legislature of the County of Suffolk.

“**Services**” means all that which the Contractor must do, and any part thereof arising out of, or in connection with, the Contract as described in **Article I** “Description of Services.”

“**State**” means the State of New York.

“**Suffolk County Payment Voucher**” means the document authorized and required by the Comptroller for release of payment.

“**Term**” means the time period set forth on page one of the Contract and, if exercised by the County, the option period.

**3. Contractor Responsibilities**

**a.** It shall be the duty of the Contractor to discharge, or cause to be discharged, all of its responsibilities, and to administer funds received in the interest of the County in accordance with the provisions of the Contract.

**b.** The Contractor shall promptly take all action as may be necessary to render the Services.

c. The Contractor shall not take any action that is inconsistent with the provisions of the Contract.

d. Services provided under this Contract shall be open to all residents of the County.

**4. Qualifications, Licenses, and Professional Standards**

a. The Contractor represents and warrants that it has, and shall continuously possess, during the Term, the required licensing, education, knowledge, experience, and character necessary to qualify it to render the Services.

b. The Contractor shall continuously have during the Term all required authorizations, certificates, certifications, registrations, licenses, permits, and other approvals required by Federal, State, County, or local authorities necessary to qualify it to render the Services.

**5. Notifications**

a. The Contractor shall immediately notify the County, in writing, of any disciplinary proceedings, commenced or pending, with any authority relating to a license held by any person necessary to qualify him or the Contractor to perform the Services.

b. In the event that a person is no longer licensed to perform the Services, the Contractor must immediately notify the County, but in no event shall such notification be later than five (5) days after a license holder has lost the license required to qualify the license holder or the Contractor to perform the Services.

c. In the event that the Contractor is not able to perform the Services due to a loss of license, the Contractor shall not be reimbursed for the Services rendered after the effective date of termination of such license. Without limiting the generality of the foregoing, if any part of the Contract remains to be performed, and the termination of the license does not affect the Contractor's ability to render the Services, every other term and provision of the Contract shall be valid and enforceable to the fullest extent permitted by law.

**6. Documentation of Professional Standards**

The Contractor shall maintain on file, in one location in Suffolk County, all records that demonstrate that it has complied with paragraphs 4 and 5 above. The address of the location of the aforesaid records and documents shall be provided to the County no later than the date of execution of the Contract. Such documentation shall be kept, maintained, and available for inspection by the County upon twenty-four (24) hours notice.

**7. Credentialing**

a. In the event that the Department, or any division thereof, maintains a credentialing process to qualify the

Contractor to render the Services, the Contractor shall complete the required credentialing process. In the event that any State credential, registration, certification, or license, Drug Enforcement Agency registration, or Medicare or Medicaid certification is restricted, suspended, or temporarily or permanently revoked, it is the duty of the Contractor to contact the Department, or division thereof, as the case may be, in writing, no later than three (3) days after such restriction, suspension, or revocation.

b. The Contractor shall forward to the Department, or division thereof, as the case may be, on or before July 1 of each year during the Term, a complete list of the names and addresses of all persons providing the Services, as well as their respective areas of certification, credentialing, registration, and licensing.

**8. Engineering Certificate**

In the event that the Contract requires any Engineering Services, the Contractor shall submit to the County, no later than the due date for submission for approval of any engineering work product, the Certificate of Authorization ("Certificate"), issued pursuant to § 7210 of the New York Education Law, of every person performing any Engineering Services. The failure to file, submit or maintain the Certificate shall be grounds for rejection of any engineering work product submitted for approval.

**9. Termination**

**a. Thirty Days Termination**

The County shall have the right to terminate the Contract without cause, for any reason, at any time, upon such terms and conditions it deems appropriate, provided, however, that no such termination shall be effective unless the Contractor is given at least thirty (30) days notice.

**b. Event of Default; Termination on Notice**

i.) The County may immediately terminate the Contract, for cause, upon such terms and conditions it deems appropriate, in the Event of Default.

ii.) If the Contractor defaults under any other provision of the Contract, the County may terminate the Contract, on not less than five (5) days notice, upon such terms and conditions it deems appropriate.

**c. Termination Notice**

Any notice providing for termination shall be delivered as provided for in paragraph 32 of this Exhibit 1.

**d. Duties upon Termination**

- i.) The Contractor shall discontinue the Services as directed in the termination notice.
- ii.) Subject to any defenses available to it, the County shall pay the Contractor for the Services rendered through the date of termination.
- iii.) The County shall be released from any and all liability under the Contract, effective as of the date of the termination notice.
- iv.) Upon termination, the Contractor shall reimburse the County the balance of any funds advanced to the Contractor by the County no later than thirty (30) days after termination of the Contract. The provisions of this subparagraph shall survive the expiration or termination of the Contract.
- v.) Nothing contained in this paragraph shall be construed as a limitation on the County's rights set forth in paragraphs 5(c) and 15 of this **Exhibit 1**.

**10. Indemnification and Defense**

- a. The Contractor shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence or any acts or omissions of the Contractor, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with the Contract.
- b. The Contractor hereby represents and warrants that it will not infringe upon any copyright in performing the Services. The Contractor agrees that it shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses arising out of any claim asserted for infringement of copyright, including reimbursement of the cost of reasonable attorneys' fees incurred by the County, its agents, servants, officials, and employees in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.
- c. The Contractor shall defend the County, its agents, servants, officials, and employees in any proceeding or action, including appeals, arising out of, or in connection with, the Contract, and any copyright infringement proceeding or action. Alternatively, at the County's option, the County may defend any such proceeding or action and require the Contractor to pay reasonable attorneys' fees or

salary costs of County employees of the Department of Law for the defense of any such suit.

**11. Insurance**

- a. The Contractor shall continuously maintain, during the Term of the Contract, insurance in amounts and types as follows:

- i.) **Commercial General Liability** insurance, including contractual liability coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury and Two Million Dollars (\$2,000,000.00) per occurrence for property damage. The County shall be named an additional insured.

- ii.) **Automobile Liability** insurance (if any non-owned or owned vehicles are used by the Contractor in the performance of the Contract) in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand Dollars (\$100,000.00) for property damage per occurrence.

- iii.) **Workers' Compensation and Employer's Liability** insurance in compliance with all applicable New York State laws and regulations and **Disability Benefits** insurance, if required by law. The Contractor shall furnish to the County, prior to its execution of the Contract, the documentation required by the State of New York Workers' Compensation Board of coverage or exemption from coverage pursuant to §§57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, the Contract shall be void and of no effect unless the Contractor shall provide and maintain coverage during the Term for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

- iv.) **Professional Liability** insurance in an amount not less than Two Million Dollars (\$2,000,000.00) on either a per-occurrence or claims-made coverage basis.

- b. The County may mandate an increase in the liability limits set forth in the immediately preceding paragraphs (11)(a)(i), (ii), and (iv).

- c. All policies providing such coverage shall be issued by insurance companies authorized to do business in New York with an A.M. Best rating of A- or better.

- d. The Contractor shall furnish to the County, prior to the execution of the Contract, declaration pages for each policy of insurance and certificates, other than a policy for commercial general liability insurance, and upon demand, a

true and certified original copy of each such policy evidencing compliance with the aforesaid insurance requirements.

e. In the case of commercial general liability insurance, and business use automobile insurance, the Contractor shall furnish to the County, prior to the execution of the Contract, a declaration page or insuring agreement and endorsement page evidencing the County's status as an additional insured on said policy, and upon demand, a true and certified original copy of such policy evidencing compliance with the aforesaid insurance requirements.

f. All evidence of insurance shall provide for the County to be notified in writing thirty (30) days prior to any cancellation, nonrenewal, or material change in the policy to which such evidence relates. It shall be the duty of the Contractor to notify the County immediately of any cancellation, nonrenewal, or material change in any insurance policy.

g. In the event the Contractor shall fail to provide evidence of insurance, the County may provide the insurance required in such manner as the County deems appropriate and deduct the cost thereof from a Fund Source.

**12. Independent Contractor**

The Contractor is not, and shall never be, considered an employee of the County for any purpose. Notwithstanding anything herein, the Contract shall not be construed as creating a principal-agent relationship between the County and the Contractor or the Contractor and the County, as the case may be.

**13. Severability**

It is expressly agreed that if any term or provision of the Contract, or the application thereof to any person or circumstance, shall be held invalid or unenforceable to any extent, the remainder of the Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and every other term and provision of the Contract shall be valid and shall be enforced to the fullest extent permitted by law.

**14. Merger; No Oral Changes**

It is expressly agreed that the Contract represents the entire agreement of the parties and that all previous understandings are herein merged in the Contract. No modification of the Contract shall be valid unless in written form and executed by both parties.

**15. Set-Off Rights**

The County shall have all of its common law, equitable, and statutory rights of set-off. These rights shall include, but not be limited to, the County's option to withhold from a Fund Source an amount no greater than any moneys due and owing to the County for any reason. The County shall exercise its set-off rights subject to approval by the County Attorney. In cases of set-off pursuant to a Comptroller's audit, the County shall only exercise such right after the finalization thereof, and only after consultation with the County Attorney.

**16. Non-Discrimination in Services**

a. The Contractor shall not, on the grounds of race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status:

i.) deny any individual the Services provided pursuant to the Contract; or

ii.) provide the Services to an individual that is different, or provided in a different manner, from those provided to others pursuant to the Contract; or

iii.) subject an individual to segregation or separate treatment in any matter related to the individual's receipt of the Services provided pursuant to the Contract; or

iv.) restrict an individual in any way from any advantage or privilege enjoyed by others receiving the Services provided pursuant to the Contract; or

v.) treat an individual differently from others in determining whether or not the individual satisfies any eligibility or other requirements or conditions which individuals must meet in order to receive the Services provided pursuant to the Contract.

b. The Contractor shall not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status, or have the effect of substantially impairing the Contract with respect to individuals of a particular race, creed, color, national origin, sex, age, disability, sexual orientation, military status, or marital status, in determining:

i.) the Services to be provided, or

ii.) the class of individuals to whom, or the situations in which, the Services will be provided; or

iii.) the class of individuals to be afforded an opportunity to receive the Services.

**17. Nonsectarian Declaration**

The Services performed under the Contract are secular in nature. No funds received pursuant to the Contract shall be used for sectarian purposes or to further the advancement of any religion. The Services will be available to all eligible individuals regardless of religious belief or affiliation.

**18. Governing Law**

The Contract shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws. Venue shall be designated in the Supreme Court, Suffolk County, the United States District Court for the Eastern District of New York, or, if appropriate, a court of inferior jurisdiction in Suffolk County.

**19. No Waiver**

It shall not be construed that any failure or forbearance of the County to enforce any provision of the Contract in any particular instance or instances is a waiver of that provision. Such provision shall otherwise remain in full force and effect, notwithstanding any such failure or forbearance.

**20. Conflicts of Interest**

The Contractor shall not, during the Term, pursue a course of conduct which would cause a reasonable person to believe that he or she is likely to be engaged in acts that create a substantial conflict between its obligations under the Contract and its private interests. The Contractor is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue as long as the Term. The determination as to whether or when a conflict may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

**21. Cooperation on Claims**

The Contractor and the County shall render diligently to each other, without compensation, any and all cooperation that may be required to defend the other party, its employees and designated representatives against any claim, demand or action that may be brought against the other party, its employees or designated representatives arising out of, or in connection with, the Contract.

**22. Confidentiality**

Any document of the County, or any document created by the Contractor and used in rendering the Services, shall remain the property of the County and shall be kept

confidential in accordance with applicable laws, rules, and regulations.

**23. Assignment and Subcontracting**

a. The Contractor shall not delegate its duties under the Contract, or assign, transfer, convey, subcontract, sublet, or otherwise dispose of the Contract, or any of its right, title or interest therein, or its power to execute the Contract, or assign all or any portion of the monies that may be due or become due hereunder, (collectively referred to in this paragraph 23 as "Assignment"), to any other person, entity or thing without the prior written consent of the County, and any attempt to do any of the foregoing without such consent shall be void ab initio.

b. Such Assignment shall be subject to all of the provisions of the Contract and to any other condition the County requires. No approval of any Assignment shall be construed as enlarging any obligation of the County under the terms and provisions of the Contract. No Assignment of the Contract or assumption by any person of any duty of the Contractor under the Contract shall provide for, or otherwise be construed as, releasing the Contractor from any term or provision of the Contract.

**24. Changes to Contractor**

a. The Contractor may, from time to time, with the County's consent, enter into a Permitted Transfer. For purposes of the Contract, a Permitted Transfer means:

i.) if the Contractor is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of the partners, or transfer of partnership interests (other than the purchase of partnership interests by existing partners, by the partnership itself or the immediate family members by reason of gift, sale or devise), or the dissolution of the partnership without immediate reconstitution thereof, and

ii.) if the Contractor is a closely held corporation (i.e. whose stock is not publicly held and not traded through an exchange or over the counter),

1. the dissolution, merger, consolidation or other reorganization of the Contractor,

2. the sale or other transfer of twenty percent (20%) or more of the shares of the Contractor (other than to existing shareholders, the corporation itself or the immediate family members of shareholders by reason of gift, sale or devise).

b. If the Contractor is a not-for-profit corporation, a change of twenty percent (20%) or more of its shares or members shall be deemed a Permitted Transfer.

c. The Contractor shall notify the County in writing, which notice (the "Transfer Notice") shall include:

i.) the proposed effective date of the Permitted Transfer, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date of delivery of the Transfer Notice;

ii.) a summary of the material terms of the proposed Permitted Transfer,

iii.) the name and address of the proposed transferee,

iv.) such information reasonably required by the County, which will enable the County to determine the financial responsibility, character, and reputation of the proposed transferee, nature of the proposed assignee/transferee's business and experience;

v.) all executed forms required pursuant to Exhibit 2 of the Contract, that are required to be submitted by the Contractor; and

vi.) such other information as the County may reasonably require.

d. The County agrees that any request for its consent to a Permitted Transfer shall be granted provided that the transfer does not violate any provision of the Contract, and the transferee has not been convicted of a criminal offense as described under Article II of Chapter 189 of the Suffolk County Code. The County shall grant or deny its consent to any request of a Permitted Transfer within twenty (20) days after delivery to the County of the Transfer Notice, in accordance with the provisions of Paragraph 32 of this **Exhibit 1** of the Contract. If the County shall not give written notice to the Contractor denying its consent to such Permitted Transfer (and setting forth the basis for such denial in reasonable detail) within such 20-day period, then the County shall be deemed to have granted its consent to such Permitted Transfer.

e. Notwithstanding the County's consent,

i.) the terms and conditions of the Contract shall in no way be deemed to have been waived or modified, and

ii.) such consent shall not be deemed consent to any further transfers.

**25. No Intended Third Party Beneficiaries**

The Contract is entered into solely for the benefit of the County and the Contractor. No third party shall be deemed a beneficiary of the Contract and no third party shall have the right to make any claim or assert any right under the Contract.

**26. Certification as to Relationships**

The Contractor certifies under penalties of perjury that, other than through the funds provided in the Contract and other valid agreements with the County, there is no known spouse, life partner, business, commercial, economic, or financial relationship with the County or its elected officials. The Contractor also certifies that there is no relationship within the third degree of consanguinity, between the Contractor, any of its partners, members, directors, or shareholders owning five percent (5%) or more of the Contractor, and the County.

**27. Publications**

Any book, article, report, or other publication related to the Services provided pursuant to this Contract shall contain the following statement in clear and legible print:

"This publication is fully or partially funded by the County of Suffolk."

**28. Copyrights and Patents**

**a. Copyrights**

If the work of the Contractor should result in the production of original books, manuals, films, or other materials for which a copyright may be granted, the Contractor may secure copyright protection. However, the County reserves to itself, and the Contractor hereby gives to the County, and to any other person designated by the County, a royalty-free, nonexclusive license to produce, reproduce, publish, translate, or otherwise use any such materials.

**b. Patents**

If the Contractor makes any discovery or invention during the Term, or as a result of work performed under the Contract, the Contractor may apply for and secure for itself patent protection. However, the County reserves to itself, and the Contractor hereby gives to the County, and to any other person designated by the County, a royalty-free, nonexclusive license to produce or otherwise use any item so discovered or patented.

**29. Arrears to County**

The Contractor warrants that, except as may otherwise be authorized by agreement, it is not in arrears to the County upon any debt, contract, or any other lawful obligation, and is not in default to the County as surety.

**30. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction**

In the event that the Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Article II of Chapter 353, as more fully set forth in **Exhibit 2** entitled "Suffolk County Legislative Requirements," the Contractor shall maintain the documentation mandated to be kept by this law on the construction site at all times. Employee sign-in sheets and register/log books shall be kept on the construction site at all times and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the construction site during such working hours.

**End of Text for Exhibit 1**

**31. Record Retention**

The Contractor shall retain all accounts, books, records, and other documents relevant to the Contract for seven (7) years after final payment is made by the County. Federal, State, and/or County auditors and any persons duly authorized by the County shall have full access and the right to examine any of said materials during said period. Such access is granted notwithstanding any exemption from disclosure that may be claimed for those records which are subject to nondisclosure agreements, trade secrets and commercial information or financial information that is privileged or confidential. Without limiting the generality of the foregoing, records directly related to contract expenditures shall be kept for a period of ten (10) years because the statute of limitations for the New York False Claims Act (New York False Claims Act § 192) is ten (10) years.

**32. Notice**

Unless otherwise expressly provided herein, all notices shall be in writing and shall be deemed sufficiently given if sent by regular first class mail and certified mail, or personally delivered during business hours as follows: 1.) to the Contractor at the address on page 1 of the Contract and 2.) to the County at the Department, or as to either of the foregoing, to such other address as the addressee shall have indicated by prior written notice to the addressor. All notices received by the Contractor relating to a legal claim shall be immediately sent to the Department and also to the County Attorney at 100 Veterans Memorial Highway, P.O. Box 6100, (Sixth Floor), Hauppauge, New York, 11788-0099.

**Exhibit 2**  
**Suffolk County Legislative Requirements**

**1. Contractor's/Vendor's Public Disclosure Statement**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of section A5-7 of Article V of the Suffolk County Code.

Unless certified by an officer of the Contractor as being exempt from the requirements of section A5-7 of Article V of the Suffolk County Code, the Contractor represents and warrants that it has filed with the Comptroller the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the Comptroller on or before the 31st day of January in each year of the Contract's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of the Contract, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Contract.

**Required Form:**

Suffolk County Form SCEX 22; entitled  
"Contractor's/Vendor's Public Disclosure Statement"

**2. Living Wage Law**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 575, of the Suffolk County Code.

This Contract is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply, all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate the Contract and to seek other remedies as set forth therein, for violations of this Law.

**Required Forms:**

Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)."

Suffolk County Living Wage Form LW-38; entitled  
"Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit."

**3. Use of County Resources to Interfere with Collective Bargaining Activities**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article I of Chapter 803 of the Suffolk County Code.

County Contractors (as defined by section 803-2) shall comply with all requirements of Chapter 803 of the Suffolk County Code, including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If the Services are performed on County property, the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

If the Services are for the provision of human services and are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Chapter 803, the County shall have the authority, under appropriate circumstances, to terminate the Contract and to seek other remedies as set forth therein, for violations of this Law.

**Required Form:**

Suffolk County Labor Law Form DOL-LO1; entitled  
"Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration - Subject to Audit."

**4. Lawful Hiring of Employees Law**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 353 of the Suffolk County Code.

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an

awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the Contract, and whenever a new contractor or subcontractor is hired under the terms of the Contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of the Contract.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate the Contract for violations of this Law and to seek other remedies available under the law.

The documentation mandated to be kept by this law shall at all times be kept on site. Employee sign-in sheets and register/log books shall be kept on site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the site during such working hours.

**Required Forms:**

Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor – Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. Section 1324a) With Respect To Lawful Hiring of Employees."

Suffolk County Lawful Hiring of Employees Law Form LHE-2; entitled "Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees"

**5. Gratuities**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 664 of the Suffolk County Code.

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement.

**6. Prohibition Against Contracting with Corporations that Reincorporate Overseas**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of sections A4-13 and A4-14 of Article IV of the Suffolk County Code.

The Contractor represents that it is in compliance with sections A4-13 and A4-14 of Article IV of the Suffolk County Code. Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

**7. Child Sexual Abuse Reporting Policy**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 880 of the Suffolk County Code.

The Contractor shall comply with Article II of Chapter 880, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy," as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of the Contract with regard to child sexual abuse reporting policy.

**8. Non Responsible Bidder**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article

II of Chapter 189 of the Suffolk County Code.

Upon signing the Contract, the Contractor certifies that it has not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under section 189-5 of the Suffolk County Code under "Non-responsible Bidder."

**9. Use of Funds in Prosecution of Civil Actions Prohibited**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article III of Chapter 893 of the Suffolk County Code.

The Contractor shall not use any of the moneys, in part or in whole, and either directly or indirectly, received under the Contract in connection with the prosecution of any civil action against the County in any jurisdiction or any judicial or administrative forum.

**10. Youth Sports**

It shall be the duty of the Contractor to read, become familiar with, and comply with Article III of Chapter 730 of the Suffolk County Code.

All contract agencies that conduct youth sports programs are required to develop and maintain a written plan or policy addressing incidents of possible or actual concussion or other head injuries among sports program participants. Such plan or policy must be submitted prior to the award of a County contract, grant or funding. Receipt of such plan or policy by the County does not represent approval or

endorsement of any such plan or policy, nor shall the County be subject to any liability in connection with any such plan or policy.

**11. Work Experience Participation**

If the Contractor is a not-for-profit or governmental agency or institution, each of the Contractor's locations in the County at which the Services are provided shall be a work site for public-assistance clients of Suffolk County pursuant to Chapter 281 of the Suffolk County Code at all times during the Term of the Contract. If no Memorandum of Understanding ("MOU") with the Suffolk County Department of Labor for work experience is in effect at the beginning of the Term of the Contract, the Contractor, if it is a not-for-profit or governmental agency or institution, shall enter into such MOU as soon as possible after the execution of the Contract and failure to enter into or to perform in accordance with such MOU shall be deemed to be a failure to perform in accordance with the Contract, for which the County may withhold payment, terminate the Contract or exercise such other remedies as may be appropriate in the circumstances.

**12. Suffolk County Local Laws Website Address**

Suffolk County Local Laws, Rules and Regulations can be accessed on the homepage of the Suffolk County Legislature.

**End of Text for Exhibit 2**